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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052897
Party	Defendant Galderma Laboratories, Inc.
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Date	11/17/2011
Attachments	RESTORADERM - Registrant's Answer.pdf (11 pages)(882485 bytes)

the allegations contained therein.

9. In response to paragraph 9 of the Amended Petition for Cancellation, Registrant admits that the “RESTORADERM Technology,” as defined in the Amended Petition for Cancellation—that is, “a technology utilizing phospholipid and/or ceramide, cholesterol and fatty acid for dermally and transdermally delivering bioactive substances”—which Registrant shall refer to herein as the “Technology,” is intended to deliver substances into or through the dermis of a patient. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 9 and, accordingly, denies such allegations.

10. In response to paragraph 10 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

11. In response to paragraph 11 of the Amended Petition for Cancellation, Registrant admits that, prior to Petitioner’s presentation of the Technology to Registrant’s predecessor-in-interest, CollaGenex Pharmaceuticals, Inc. (“CollaGenex”), CollaGenex did not use the trademark RESTORADERM. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 11 and, accordingly, denies such allegations. Specifically, Registrant denies that Petitioner “labeled” the Technology as “Restoraderm Technology.”

12. In response to paragraph 12 of the Amended Petition for Cancellation, Registrant admits the allegations contained therein.

13. In response to paragraph 13 of the Amended Petition for Cancellation, Registrant denies that Petitioner licensed the trademark RESTORADERM and the Technology to CollaGenex in an Agreement effective February 11, 2002. The remaining statements of paragraph 13 do not constitute factual allegations and, accordingly, do not warrant an answer.

14. In response to paragraph 14 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegation that Petitioner and CollaGenex collaborated on the filing of a first provisional patent application on the Technology.

Registrant admits the remaining allegations of paragraph 14.

15. In response to paragraph 15 of the Amended Petition for Cancellation, Registrant notes that the allegations of paragraph 15 characterize the terms of an agreement. In this regard, Registrant submits that the 2002 Agreement, as defined in the Amended Petition for Cancellation, shall speak for itself, and thus, Registrant denies any such allegations that are inconsistent with the 2002 Agreement.

16. In response to paragraph 16 of the Amended Petition for Cancellation, Registrant admits that certain deliverables were conveyed by Petitioner to CollaGenex in Newtown, Pennsylvania, USA and that certain payments therefor were made to Petitioner. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

17. In response to paragraph 17 of the Amended Petition for Cancellation, Registrant admits that Petitioner provided consulting services via phone, fax, and in person to CollaGenex in Newtown, Pennsylvania and that certain payments therefor were made to Petitioner. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 17 and, accordingly, denies such allegations.

18. In response to paragraph 18 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

19. In response to paragraph 19 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

20. In response to paragraph 20 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations. With regard to Petitioner's characterization of the poster provided at Exhibit 9 of the Amended Petition, Registrant submits that the document shall speak for itself.

21. In response to paragraph 21 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained

therein and, accordingly, denies such allegations.

22. In response to paragraph 22 of the Amended Petition for Cancellation, Registrant notes that the allegations of paragraph 22 characterize the terms of an agreement. In this regard, Registrant submits that the 2004 Agreement, as defined in the Amended Petition for Cancellation, shall speak for itself, and thus, Registrant denies any such allegations that are inconsistent with the 2004 Agreement.

23. In response to paragraph 23 of the Amended Petition for Cancellation, Registrant notes that the allegations of paragraph 23 characterize the terms of an agreement. In this regard, Registrant submits that the 2004 Agreement, as defined in the Amended Petition for Cancellation, shall speak for itself, and thus, Registrant denies any such allegations that are inconsistent with the 2004 Agreement.

24. In response to paragraph 24 of the Amended Petition for Cancellation, Registrant admits the allegations contained therein.

25. In response to paragraph 25 of the Amended Petition for Cancellation, Registrant admits that in July 2007 CollaGenex filed an application to register the trademark RESTORADERM, which application resulted in the issuance of U.S. Trademark Reg. No. 3,394,514 in International Class 003 for non-medicated skin care preparations. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 25 and, accordingly, denies such allegations.

26. In response to paragraph 26 of the Amended Petition for Cancellation, Registrant admits that in November 2007 Greg Ford, Vice President of Business Development & Strategic Planning at CollaGenex, informed Petitioner in a telephone conversation and in an email that CollaGenex had decided not to develop a product based on the Technology. Registrant denies the remaining allegations contained in paragraph 26.

27. In response to paragraph 27 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

28. In response to paragraph 28 of the Amended Petition for Cancellation, Registrant admits

that Petitioner sent a letter to CollaGenex dated January 29, 2008 purporting to terminate the 2004 Agreement, as that term is defined in the Amended Petition, and citing an alleged breach of contract. Registrant states that it is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 28 to the extent that such allegations characterize the provisions of the January 29, 2008 letter. In this regard, Registrant submits that the January 29, 2008 letter shall speak for itself. Accordingly, Registrant denies such allegations. Further, to the extent that paragraph 28 alleges that the January 29, 2008 letter requested the return of the RESTORADERM trademark, Registrant specifically denies such allegation.

29. In response to paragraph 29 of the Amended Petition for Cancellation, Registrant admits the allegations contained therein.

30. In response to paragraph 30 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

31. In response to paragraph 31 of the Amended Petition for Cancellation, Registrant denies the allegations contained in the first sentence of paragraph 31 to the extent that the allegations therein characterize statements made in a letter. Registrant submits that the document shall speak for itself. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 31 and, accordingly, denies such allegations.

32. In response to paragraph 32 of the Amended Petition for Cancellation, Registrant admits the allegations contained in the first sentence of paragraph 32 except that Registrant denies that such communication took place in March 2009. Registrant denies the remaining allegations contained in paragraph 32.

33. In response to paragraph 33 of the Amended Petition for Cancellation, Registrant admits the allegations contained therein.

34. In response to paragraph 34 of the Amended Petition for Cancellation, Registrant admits the allegations contained in the first sentence of paragraph 34 but denies the allegations contained in the second sentence. Registrant further admits that, subsequent to its November 27, 2009 letter, Registrant

returned to Petitioner certain patent applications and products and samples, some of which patent applications were returned to Petitioner on or about February 22, 2010. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 34 and, accordingly, denies such allegations.

35. In response to paragraph 35 of the Amended Petition for Cancellation, Registrant admits the allegations contained therein.

36. In response to paragraph 36 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

37. In response to paragraph 37 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

38. In response to paragraph 38 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

39. In response to paragraph 39 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

40. In response to paragraph 40 of the Amended Petition for Cancellation, Registrant admits that Registrant's RESTORADERM-branded products are currently being offered for sale in the United States. Registrant further admits the allegations contained in the second sentence of paragraph 40 to the extent that the allegations therein relate to one of Registrant's RESTORADERM-branded products. Registrant further admits that the Technology relates to phospholipid and/or ceramide, cholesterol, and free fatty acids. Registrant states that it is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 40 and, accordingly, denies such allegation.

41. In response to paragraph 41 of the Amended Petition for Cancellation, Registrant denies

the allegations contained therein.

42. In response to paragraph 42 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

43. Paragraph 43 does not warrant an answer.

44. In response to paragraph 44 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

45. In response to paragraph 45 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

46. In response to paragraph 46 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

47. In response to paragraph 47 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

48. In response to paragraph 48 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

49. Paragraph 49 does not warrant an answer.

50. In response to paragraph 50 of the Amended Petition for Cancellation, Registrant admits that its RESTORADERM-branded products shown in Exhibit 13 of the Amended Petition for Cancellation consist of a moisturizer and a body wash. Registrant denies the remaining allegations contained in paragraph 50.

51. In response to paragraph 51 of the Amended Petition for Cancellation, Registrant admits that it has not obtained approval from the Food and Drug Administration to market its RESTORADERM-branded products.

52. In response to paragraph 52 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

53. In response to paragraph 53 of the Amended Petition for Cancellation, Registrant denies

the allegations contained therein.

54. In response to paragraph 54 of the Amended Petition for Cancellation, Registrant denies the allegations contained in the first sentence of paragraph 54. The remaining statements of paragraph 54 do not constitute factual allegations and, accordingly, do not warrant an answer.

55. In response to paragraph 55 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

56. In response to paragraph 56 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

57. In response to paragraph 57 of the Amended Petition for Cancellation, Registrant states that it is without knowledge or information sufficient to form a belief as to the allegations contained therein and, accordingly, denies such allegations.

58. The statements of paragraph 58 do not constitute factual allegations and, accordingly, do not warrant an answer.

59. In response to paragraph 59 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

60. In response to paragraph 60 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

61. In response to paragraph 61 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

62. In response to paragraph 62 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

63. The statements of paragraph 63 do not constitute factual allegations and, accordingly, do not warrant an answer.

64. Paragraph 64 does not warrant an answer.

65. In response to paragraph 65 of the Amended Petition for Cancellation, Registrant denies

the allegations contained therein.

66. Paragraphs 66 through 80 were stricken pursuant to the Board's Order of October 13, 2011.

67. Paragraph 81 does not warrant an answer.

68. In response to paragraph 82 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

69. Paragraph 83 does not warrant an answer.

70. In response to paragraph 84 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

71. In response to paragraph 85 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

72. In response to paragraph 86 of the Amended Petition for Cancellation, Registrant denies the allegations contained therein.

73. Paragraph 87 does not warrant an answer.

74. Paragraph 88 does not warrant an answer.

DEFENSES

75. Petitioner has no valid rights in the mark RESTORADERM.

76. Registrant's rights in its RESTORADERM mark predate any trademark rights, if any, that Petitioner may own in the term RESTORADERM.

77. To the extent that Petitioner ever owned any trademark rights in the mark RESTORADERM, Petitioner assigned all such rights to Registrant.

78. Petitioner's Amended Petition for Cancellation is barred by the doctrines of laches, acquiescence, and estoppel.

WHEREFORE, Registrant denies that Petitioner is entitled to any of the relief requested in the Amended Petition for Cancellation and requests that the Board dismiss the Petition with prejudice and grant such other and further relief as is deemed just and proper.

Respectfully submitted,

Date: November 17, 2011



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